UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/2001/SR.15
8 April 2001

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fifth session

SUMMARY RECORD (PARTIAL)* OF THE 15th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 May 2001, at 11 a.m.

Chairperson: Mrs. BONOAN-DANDAN

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* No summary record was prepared for the first part (closed) of the meeting.

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GE.01-41691 (E)

The public part of the meeting was called to order at 11.15 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of Bolivia (E/1990/5/Add.44; E/C.12/Q/BOL/1; HR/CESCR/NONE/2001/6; HRI/CORE/1/Add.54/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of Bolivia took places at the Committee table.

2. The CHAIRPERSON welcomed the members of the Bolivian delegation and gave it the floor to introduce the Government's initial report.

3. Mr. CAMACHO (Bolivia) apologized for the absence of the Vice-Minister of Justice, who was expected to join them for the following meeting. He explained that the social upheaval being experienced by Bolivia had accounted for lacunae in the initial report, which had, however, been remedied in the written replies (HR/CESCR/NONE/2001/6). Bolivia had made considerable progress in the area of economic, social and cultural rights. It was important to highlight the advances made as a result of the Covenant, which had been translated into the preparation of a series of legal instruments, some of which were already being enforced.

4. The authorities were endeavouring to consolidate a mere 19 years of democracy by ensuring that commitments in those areas were fulfilled through legal and juridical measures developed in a context of medium-term and long-term planning. The eradication of coca cultivation was one of the country's most urgent tasks. Accordingly, many of the country's human rights and other training programmes had targeted police and military personnel serving in areas with a high concentration of coca production, as well as the country's anti-narcotics brigades.

5. The CHAIRPERSON invited Committee members to put their questions concerning written replies 1 to 9, which covered the general framework of human rights protection and articles 2 and 3 of the Covenant.

6. Mr. RIEDEL, referring to question 2 on the list of issues, said that the Committee was interested in hearing how the Covenant could be invoked in Bolivian courts and what the exact implementation process was. Although the relevant law had been in force for only two months, more information should be provided on the application of the Covenant in Bolivian law and administration. The written answer to question 7 on the list of issues stated that Bolivia's attitude towards any optional protocol was positive. However, in terms of the country's submissions on international human rights instruments, its record was less than convincing in that it had not signed the Optional Protocol to the International Covenant on Civil and Political Rights and had still not ratified the Additional Protocol to the American Convention on Human

Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") though it had been signed in 1988. The positive attitude stated required substantiation if it was to be credible.

7. Mr. MARCHÁN-ROMERO said that, with regard to the claim that the Covenant could be invoked in any Bolivian court, it would be interesting to hear details of actual case law. The Committee was aware of Bolivia's theoretical approach but had no idea about how the Covenant was applied in practice.

8. The delegation also stated that Bolivia recognized the legal personality of indigenous and peasant farming communities. Although the comments made with regard to the latter group were clear, more explanation should be provided on the acknowledgement of the legal personality of indigenous communities. Did regional or other geographical entities exist in that regard and what laws governed the rights of indigenous communities? Lastly, had non-governmental organizations (NGOs) participated in the preparation of Bolivia's report and had dialogue been conducted with civil society?

9. Mr. HUNT noted that Bolivia was a country covered by the Heavily Indebted Poor Countries (HIPC) Initiative whereby debt relief was granted, provided that it prepared a poverty reduction strategy paper. Under the HIPC rules, the strategy paper must be "country-owned" and prepared in cooperation with civil society. The interim paper produced in January 2000 dealt with the subject matter of the Covenant, in that it referred to education, discrimination, income levels, health, vulnerability, etc. At another level, however, the interim paper was virtually silent on human rights, making no mention at all of the Covenant as such. So from the Committee's viewpoint the paper was strangely ambiguous.

10. The view existed that the Covenant could be used to strengthen anti-poverty strategies through the introduction of specific standards, human rights indicators and a sense of accountability. Did the delegation agree with that opinion? Secondly, the view was also common that reference to a State party's binding international obligations under the Covenant could help the State party in its dealings with the International Monetary Fund (IMF) and World Bank in the context of the HIPC. Did Bolivia concur with that view?

11. Mr. TEXIER said that unfortunately Bolivia had waited a very long time following the ratification of the Covenant in 1982 before actually submitting its initial report in 1999. It was to be hoped, however, that henceforth dialogue with the Committee would be unceasing. On the subject of regional institutions, Bolivia had recognized the competence of the Interamerican Human Rights Commission and had agreed to recognize, on an unconditional and permanent basis, the decisions taken by the Interamerican Human Rights Court. The current status of the Additional Protocol to the American Convention on Human Rights should also be ascertained. It had been applicable for several months, but had Bolivia actually ratified it?

12. On the subject of current demonstrations in La Paz by peasant farmers and indigenous populations, the eradication of cultivation of the coca plant leaf was a laudable aim in itself, though coca-growing was traditional. However, information was needed as to whether sufficient replacement crops existed for peasant farmers to make a living.

13. Although it was clear that the Ombudsman had overall human rights competence, he would like to know whether the official in question had intervened in areas relating to rights recognized in the International Covenant on Economic, Social and Cultural Rights. As to non-discrimination against indigenous populations, it was true that Bolivia had a very large and primarily rural population of Amerindian origin. Since article 1 of the National Constitution affirmed in positive terms the multicultural and multi-ethnic nature of Bolivian society, what was the current state of affairs? Were the main indigenous languages such as Quechua, Aymara and Tupi-Guarani freely spoken and was education available in them? It had been stated that the current reform of the Code of Criminal Procedure would make translation of relevant documentation into indigenous languages compulsory for the benefit of persons appearing in courts who did not speak Spanish. What, though, was the actual level of participation of indigenous populations and their cultures in political and economic life? More than half the national population were of indigenous origin and therefore it should be explained in general terms how article 1 of the National Constitution was applied in practice.

14. Mr. MALINVERNI requested precise information on the status of the Covenant in the domestic legal order. Under the law adopted in 2000, was the Covenant considered to take precedence over domestic legislation? What action was taken in case of conflict between national legislation and the Covenant? Were the provisions of the Covenant considered directly applicable, i.e. could they be invoked directly by courts? Or was an implementing law required, in which case the Covenant would merely represent a series of desired objectives?

15. Concerning the use of languages other than Spanish in courts, the delegation had stated that under the revised Penal Code non-Spanish speakers would receive interpretation and translation services. Were those services free of charge or were they paid for by defendants? As to non-discrimination, though article 1 of the Constitution recognized the multicultural and multi-ethnic nature of Bolivian society, members of indigenous populations had a 40 per cent greater chance of being poor. Information should therefore be provided on the specific measures taken by the Government to combat poverty, marginalization and discrimination affecting indigenous groups.

16. Mr. CEAUSU observed said that whenever the Committee examined a State party's report it considered what resources were available for the country to discharge its obligations under the Covenant, article 2.1 of which required each State party to work for the realization of the rights recognized therein "to the maximum of its available resources". In the information provided on Bolivia's situation it was noteworthy that the most commonly used terms were those relating to poverty, lack of resources and heavy external debt servicing. A clearer idea should be given of why Bolivia was one of the most heavily indebted countries in Latin America and why its level of poverty was so acute. The delegation should clarify exactly what resources the country had available to meet its Covenant obligations. What, for example, was the precise breakdown of its GDP among the different branches of the economy? How was its State budget divided up in terms of receipts and expenditures? States sometimes used their resources to even out a negative trade balance; what was the current state of Bolivia's trade balance? What major products did it export and did the prices it obtained represent the true value of the goods? Since Bolivia was largely an agricultural country, it was important to determine what percentage of its

food requirements were produced domestically. In general, what were its available resources, why were they so limited, and had the authorities undertaken any effort to increase the resources with a view to implementing economic, social and cultural rights?

17. Mr. PILLAY said that in order to achieve a fruitful dialogue the delegation of Bolivia should provide full answers to the specific questions raised. Concerning the status of the Covenant in the domestic legal order, he noted that, according to the report, any human rights treaty must be incorporated into domestic legislation before it had force of law. According to paragraph 29 of the initial report, the Covenant had been ratified by decree-law and, since it did not take the form of a law, had not been published or disseminated in the Official Gazette. According to paragraph 38 of the report, courts did not directly apply the Covenant. Reference was also made to the "Promotion and defence of human rights" project, financed, as designed to provide assistance by the United Nations "in incorporating the Covenant into domestic law, in creating a mechanism for its dissemination, and in reflecting the Covenant in sectoral policies and laws for implementation in various fields affecting a variety of social actors". What was the current state of that project?

18. The delegation had stated that the Covenant had been incorporated into domestic law in 2000, although, according to a paper produced by the Bolivian Civil Society, that was not the case owing to lack of political will. The delegation should therefore clarify the matter. On the subject of the National Constitution, article 171 recognized the economic, social and cultural rights of indigenous peoples. However, information had been received according to which Afro-Bolivian communities faced discrimination in all sections of society. Was any case law available on such discrimination? What efforts was the Ombudsman making to protect and promote those rights? Again, was there any case law in relation to the provisions of the National Constitution protecting the rights to health, education, land ownership and so on?

19. It had been stated that constitutional rights were in the remit of the Supreme Court of Justice, a body which required men and women of honesty and integrity if those rights were to be respected. However, according to a 1998-1999 European Union Country Profile, the Supreme Court was in need of reform since it was frequently the subject of corruption allegations made by the Head of the Bolivian Senate. Had any such reforms been carried out? In that connection, it was surprising to note that although the Judicature Council comprised members of the Supreme Court, it did not have any jurisdiction over the Court or the Office of the Ombudsman.

20. Mr. SADI said that poverty was the overriding problem in Bolivia, affecting 70 per cent of people in general and up to 94 per cent in rural areas. More information should be provided on the salient features of the poverty reduction strategy adopted. It should also be made clear to what extent the Covenant had been taken into account in the debt relief agreements entered into with the IMF and World Bank. Did Bolivia plan to establish a human rights commission in accordance with the 1991 Paris Principles? Did the national Ombudsman have a role to play in that regard? Did Bolivia intend to set up a human rights plan of action in accordance with the recommendations made at the 1993 Vienna Human Rights Summit? A clear statement of minority rights was to be found in article 27 of the International Covenant on Civil and Political

Rights. Were there any plans to take those rights into account in formulating national policy and, if not, would General Comment 23 of the Human Rights Committee on minority rights be considered?

21. Ms. BARAHONA RIERA, noting that Bolivia was bringing women to the fore in development and the fight against poverty, requested more details about the Under-Secretariat for Gender Affairs, its constitution, budgetary resources, degree of independence, its powers to implement and promote gender policies, representation of civil society and women's groups, and plans for inclusion of a gender component in projects of other departments. She asked whether there was a body that monitored the implementation of labour legislation and whether the rights of some 114,000 domestic workers remained unprotected owing to delays in adopting an amendment. Turning to gender equality in reproductive health, she asked how far the wishes of women regarding the use of contraceptives were taken into account. Was there an institution promoting such matters and what influence was exerted by religious bodies on the formulation of government policy, education policy and the policy of civil groups.

22. Mr. AHMED, observing that the Bolivian authorities and the Committee alike would surely want to see all the human rights recognized by the Covenant not just respected in theory, but implemented in practice, emphasized the vital importance of monitoring. According to the United States State Department report on Bolivia in 1999, forced or compulsory labour, child apprenticeship, agricultural servitude and the exploitation of domestic workers were still prevalent in spite of legislation to prohibit such unacceptable practices. He requested the delegation to comment on the authenticity of that report.

23. Mr. RATTRAY asked whether the Bolivian Government regarded the Covenant as imposing legal obligations or as an expression of aspirations. While recognizing that Bolivia, one of the least developed countries in the Americas, was in a very difficult economic situation, he pointed out that some of the obligations recognized by the Covenant did not depend on resources for their implementation. What plans did the Government have for redressing the discrimination and inequalities that appeared to exist in relation to women and indigenous peoples? Noting that the indigenous peoples constituted a majority of the population, he wondered how discrimination against them could continue in a democratic system. Acknowledging the effort made to eliminate coca leaf growing, he nevertheless asked whether the share of national resources devoted to that cause had not been disproportionate, to the detriment of the country's ability to tackle problems in areas covered by the Covenant such as social security, housing and education. Lastly, the status of the Covenant was not clear to him. According to the initial report (para. 37), it was "in the process of being elevated to the rank of law". However, the report went on: "The courts do not directly apply the Covenant, there being no established practice in this regard either on the part of the Government or in civil society." Did the Government regard it as a major challenge to raise awareness of human rights and the obligations arising therefrom and to create a culture of human rights, or was society so traumatized by the economic distress that it was unable to devote attention to that question?

24. Mr. GUMUCIO DAGRON (Bolivia), responding to questions, said that the Covenant, and indeed all other international instruments, became domestic law with the same validity as any other domestic law once they were ratified by the National Congress. All laws, including the Constitution, were implemented in accordance with the country's possibilities, and therefore

the Covenant was no more aspiration or no less reality than any other domestic law. International commitments could not, however, be enforced until they had entered into the national codes and regulations, a process which could take several years.

25. Mr. CAMACHO (Bolivia), replying to another question, explained that under the provisions of the Popular Participation Act of 1995 Bolivia had been divided into 300 municipalities, implicitly recognizing the original grass-roots territorial organizations of the country. Each municipality was autonomous, elected its own council by a participatory and democratic process, had full administrative rights over its territorial area and was the primary interface in the dialogue with the Government. More important still, the Act provided that State revenues had to be allocated to the municipalities in proportion to the number of inhabitants, for the purposes of the provision of services such as water, sanitation, education and health. Thus, by devolving powers to the lowest possible level in what had been a highly centralized State, the Government had given effect to important rights relating to identity, organization and participation recognized by the Covenant.

26. For the purpose of formulating its poverty reduction strategy, the Government, with assistance from the international community, had launched a "country dialogue" conducted at municipal, departmental and national levels. Needs had been identified and priorities set for activities, programmes and sectors in a process operating from the grass roots upwards. Resources made available under the Heavily Indebted Poor Countries (HIPC) Initiative would be spent primarily on investment and distributed to the municipalities in proportion to the national poverty indicators, with two thirds going to the poorest.

The meeting rose at 1 p.m.